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PATENT APPLICATION
ATTORNEY DOCKET NO. 10992824-1

**IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE**

Inventor(s): Huey Ly

Confirmation No: 3079

Application No: 09/510,747

Examiner: William H. Wood

Filing Date: February 22, 2000

Group Art Unit: 2124

**SUBJECT: DEPLOYED AGENT USED IN THE INSTALLATION AND
MAINTENANCE OF SOFTWARE**

COMMISSIONER FOR PATENTS

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REPLY BRIEF

Appellant herein replies to new points raised in the Examiner's
Answer for the above-identified case.

RELATED APPEALS AND INTERFERENCES

Examiner has asserted that the brief does not contain a statement
identifying the related appeals and interferences.

The Appeal brief included a statement, and Appellant hereby
reiterates, that Appellant is aware of no related appeals or interferences.

ARGUMENT

A. Discussion of Group 2 claims (claims 11 through 20)

In the rejection of claim 11, as set out in the Office Actions, Examiner provided a two sentence rationale for rejecting claim 11 though 16 and 21. Essentially, the Examiner argued the limitations in claim 11 are the same as in claims 1 through 10 only arranged differently.

In the Appeal Brief (and the preceding Responses to Office Actions), Appellant argued this rationale did not set out a prima facie case of obviousness, because Examiner made no attempt to address the clear differences between claim 11 and claims 1 through 10.

In the Examiner's Answer, Examiner has been more specific in pointing how the Examiner believes his rationale for rejecting in claims 1 through 10 relate to the elements of claim 11.

In the Examiner's Answer, Examiner went on to argue as follows:

Apparently, Appellant agrees, the functionality of claims 1 through 10 was disclosed by Touboul, as Appellant has failed to make a substantial argument otherwise, other than the previously mentioned integrity argument. Appellant only contests structure to perform the functionality.

This is an incorrect summary of Appellant's position. Since the Examiner did not give a detailed rationale for the rejection of claim 11, nor explain how Examiner believed the elements of claim 11 corresponded to claims 1 through 10, Appellant was unable to comprehend Examiner's reasoning for the rejection nor respond to the unstated rationale. Now that Examiner has provided more information about how the Examiner intends

the rejection of claims 1 through 10 to be applied to claim 11, Appellant can respond to the argument.

For example, Examiner has now argued that “the main engine set out in claim 1 is mapped to Touboul “in relation to claim 1”. Appellant herebelow responds to this assertion.

In claim 11, a main engine maintains the specified applications. Maintaining the specified applications includes making updates to the specified applications when new versions of the specified applications are available on the managing computer. This is not disclosed or suggested by Touboul, whether considered alone or in combination with the other cited references.

In the rationale for the rejection of Appellant’s claim 1, Examiner conceded that software updating is not disclosed in Touboul. However, Examiner argued that it would have been obvious to one of ordinary skill in the art at the time of invention to implement *Touboul*’s agents with software updating as found in *Hodges*’ teaching.

As discussed more fully in the Appeal Brief, the Examiner argued that one of ordinary skill in the art would be motivated to shift useful functionality to an automated agent in order to decrease burden on the network administration. However, the Examiner failed to cite any art where this motivation is taught or suggested. Neither *Touboul* nor *Hodges* teach that it would be desirable “to shift useful functionality to an automated agent in order to decrease burden on the network administration”. Neither *Touboul* nor *Hodges* teach there is any need to decrease burden on the network

administration. Neither *Touboul* nor *Hodges* teach that if there were a burden on the network administration the way to alleviate the burden would be to shift useful functionality to an automated agent. This information is available only from a reading of Appellant's disclosure. It is an improper reconstruction when the motivation to combine references is available only from knowledge gleaned from Appellant's disclosure.

B. Discussion of Group 1 claims (claims 1 through 7, 9 and 10)

Examiner has variously cited definitions of an agent and asserted that "the use of the term agent is a management unit offloading work onto a helper unit (the agent)."

On the basis of the definitions and the subject matter in *Touboul*, Examiner argues for the obviousness of using agents to make updates of specified applications when new versions of the specified applications are available on the managing computers set out in claim 1 of the present case.

This new argumentation my Examiner has failed to make obvious the combination of *Touboul* and *Hodges*.

While Appellant recognizes that agents can be and have been used to offload work, this general understanding of the functionality of an agent is not sufficient to provide a motivation for combining the teaching of *Touboul* and *Hodges*.

As discussed in the Appeal Brief, the Examiner needs to provide a suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine

reference teachings in order to establish a *prima facie* case of obviousness. Examiner has failed to provide such a motivation.

Installation of Agents

Examiner has newly argued that Touboul demonstrates installing agents in Figure 6 and at column 16, lines 1 through 65. However, this section of Touboul does not teach or suggest the subject matter of step (a) of claim 1. Specifically, this section of Touboul does not disclose or suggest that an agent is forwarded from a managing computer to a managed computer (as in step (a) of claim 1). Likewise, this section of Touboul does not disclose or suggest that the agent installs itself on the managed computer (as in substep (a.1) of claim 1).


Rather, in Touboul a generic agent is loaded as a TSR program. See column 16, lines 1 through 6. This is initiated by a login script. See column 16, lines 12 through 14. The generic agent then establishes connection with the manager and eventually installs the agent. See column 16, lines 28 through 44.

Thus, while it is clear that Touboul performs installation of an agent, it is also clear that the agent does not install itself on the managed computer. Rather, it is installed by a generic agent, resident on the workstation and started at initialization.

CONCLUSION

For all the reasons discussed above, and in the Appeal Brief, Appellant believes the rejection of the claims was in error and respectfully requests that the rejection be reversed.

Respectfully submitted,
HUEY LY

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